



RIVER ALLIANCE of Wisconsin

January 14, 2010

Senator Jim Holperin, Chair,
Senate Transportation, Tourism, Forestry and Natural Resources Committee
Members of the Transportation, Tourism, Forestry and Natural Resources Committee
330 Southwest
State Capitol

RE: SB 301, Shoreland Zoning

Dear Senator Holperin and Members of the Senate Transportation, Tourism, Forestry and Natural Resources Committee:

The River Alliance of Wisconsin is a non-profit, non-partisan organization representing over 3500 members and supporting over 150 watershed groups around the state. We advocate for the protection and restoration of the state's flowing waters.

The River Alliance was represented on the Citizen Advisory Committee appointed to assist DNR in the multi-year effort to update Shoreland Zoning, NR 115, and was intimately involved from the very beginning to the final hour. We were also at the table specifically to discuss issues raised by rural towns at the Senate Committee on the Environment and Assembly Natural Resource Committee hearings on NR 115, and ultimately supported revisions to the proposed rule to address their concerns. With the finalization of NR 115, SB 301 is unnecessary, dangerously broad and removes the few water quality safeguards required of property owners in unincorporated towns.

Two very significant changes were made to NR 115 specifically to address developed rural towns. First, the area to which impervious surface limits are applied was reduced from the land area within 1000 feet from the water to the land area within 300 feet from the water. Second, existing impervious surface within that 300 feet area, even if exceeding the impervious surface standard, can be maintained, relocated on the property as long as no more is added, and even modified from ground level (for example, a parking lot) to a building of the same area. These changes provide significant flexibility for property owners in rural towns, but as NR 115 is a statewide rule, also result in far less protection for waterways in less developed areas than originally proposed. A painful tradeoff was made to address the needs of rural towns. This bill is not only unnecessary, but it ignores the tradeoffs made at the expense of the environment and the purpose of Shoreland Zoning.

Further, SB 301's criteria for exemption from Shoreland Zoning are overly broad, potentially allowing for exemption of multiple communities and cross-road business areas in sensitive landscapes. The bill also places the burden on counties to apply the criteria and decide by ordinance which areas are to be exempt, a form of inequitable "spot-zoning" with no defensible purpose. And determining how and where to define the area to be exempt is sure to be an extremely controversial, burdensome exercise as property owners clamor to be within the exempt area.

Assuming SB 301 is aimed to provide flexibility to larger towns with urban development, it unfairly grants privileges to such towns over incorporated cities. Cities are exempt from state Shoreland Zoning, but are subject to federal and state requirements to control erosion and polluted runoff while towns are not. Other than state standards to control runoff from large construction projects, towns, even those larger than and with higher densities than some smaller incorporated cities, are not held to the same public service responsibilities. One of the few ways to attempt to control runoff and erosion in towns is through Shoreland Zoning; exempting them absolves them of the few tools available.

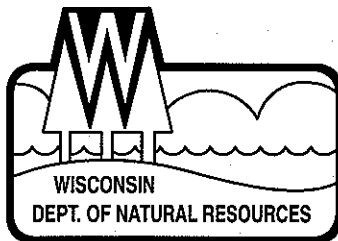
After years of work, NR 115 was revised in the final hour primarily to address the concerns raised by the towns. This bill negates that work, opens the door for nearly every remote business area to argue for exemption from statewide rules intended to protect the state's waters, and unfairly lets towns off the hook for control of stormwater runoff. We urge you to set this bill aside, and allow the newly revised NR 115 to work.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Grant", with a stylized flourish extending from the end.

Lori Grant

Water Policy Program Manager



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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Testimony of the Department of Natural Resources regarding SB 301

Senate Committee on Transportation, Tourism, Forestry and Natural Resources January 14, 2009

The Department has several concerns regarding SB 301. To understand the implications of this proposed bill, it's important to know the history of shoreland protection in Wisconsin. Forty years ago, our legislature recognized the need to protect our 25,000 lakes and 54,000 miles of rivers and streams as economic development progressed along Wisconsin waterways. So statutory requirements for counties to regulate land use in unincorporated shoreland areas were adopted, with a strong purpose:

“...to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.”
excerpt from s. 281.31(1), Stats.

State rules soon followed in the form of NR 115, Admin. Code, which established key shoreland management standards like minimum lot sizes, a 75-foot building setback, and protections for wetlands. Counties adopted and have been administering their shoreland zoning ordinances, updating them over the years to incorporate new science and innovative approaches to balance property rights with environmental protections. Recently, after more than 7 years of rulemaking and extensive participation from counties, citizens, interest groups and legislators, updates to NR 115 were completed, and go into effect next month.

When these statutes were originally adopted, their applicability was limited to unincorporated areas, acknowledging the extensive historic waterfront development already in place in Wisconsin's cities and villages. In the 1980's, when individuals tried to avoid shoreland zoning by annexing unincorporated lands into a city or village, the loophole was closed with additional statutory requirements that the applicable shoreland zoning stay with a property even if it's annexed.

Now, after more than four decades of strong regulatory protection, we have revised shoreland rules that counties are ready to put into place, and this bill concerns us because:

- The proposed bill diminishes protections for public waters, by lifting land use requirements that have applied to all unincorporated areas for 40 years. Some have said that it's unfair that cities and villages are not subject to shoreland zoning. If that's the concern, then we suggest increasing protections for cities and villages, rather than eliminating all shoreland protections in select unincorporated areas.
- The proposed bill is overly broad in creating exemptions from shoreland zoning. By our estimates, over 100 “urban towns” all over the state could qualify for this exemption. Of even further concern is that almost any sewer commercial property with a paved road - or even a residential property with a home-based business - could meet the proposed statutory criteria in this bill, essentially giving a free pass to just about anyone who doesn't want to be subject to the same shoreland zoning standards as everyone else.

- The proposed bill will be burdensome for counties to implement. The work to assess whether properties or areas meet the criteria, and the resulting need to track and administer different zoning districts, will add to the already complex and heavy workload of county zoning offices. If this bill becomes law, county staff and elected officials will be pressured to lift shoreland regulations, and will be hard-pressed to turn down any request that qualifies, essentially eliminating any local control over land use development on their waterways.
- Finally, the proposed bill will harm waterfront communities. Many of Wisconsin's rural communities have grown up along rivers or lakes. Experience has shown that strong consistent regulatory protections maintain high quality water resources and sustain property values. Lifting long-standing shoreland protections in these areas will diminish the habitat, water quality and natural scenic beauty of the state's waterways, and lead to decreasing property values.

Wisconsin residents and visitors alike have a strong emotional tie to Wisconsin's lakes and rivers. It shows in how we enjoy the lakes and rivers, how we manage them, and how we protect them. The Department urges you to reconsider this legislation, and allow the new rules and county ordinances to move Wisconsin forward in a positive direction of sustained property values, economic growth and high quality lake and river resources for all to enjoy.
